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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,437	01/15/2002	Lawrence W. Hrubesh	IL-10413	6489

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THE REGENTS OF THE UNIVERSITY OF CALIFORNIA  
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EXAMINER
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LISH, PETER J

ART UNIT	PAPER NUMBER
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1754

DATE MAILED: 03/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/050,437  
Filing Date: January 15, 2002  
Appellant(s): HRUBESH, LAWRENCE W.

John P. Woolridge  
For Appellant

**EXAMINER'S ANSWER**

**MAILED**  
MAR 01 2006  
**GROUP 1700**

This is in response to the appeal brief filed 25 November 2005 appealing from the Office action mailed 19 April 2005.

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**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Droege et al. (US 5,945,084). This rejection is set forth in a prior Office Action, mailed on 20 July 2004.

Claims 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Droege et al. (US 5,945,084). This rejection is set forth in a prior Office Action, mailed on 20 July 2004.

Claims 1, 4, 8, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pekala et al. (US 5,932,185) in view of Kaschmitter et al. (US 5,260,855). This rejection is set forth in a prior Office Action, mailed on 20 July 2004.

**(10) Response to Argument**

The Declaration under 37 CFR 1.132 filed 25 January 2005 is insufficient to overcome the rejection of claims 1, 4, 8, and 18 based upon Droege as set forth in the last Office action.

The applicants argue that the presently claimed invention includes a drying step that reduces surface tensile forces in order to form a monolithic composite whereas the drying step of Droege does not provide the formation of a monolithic composite. In response, it is noted that

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the original disclosure of the applicants clearly states “Drying of the gel/foam composite is then carried out by evaporation for a time period of 12 to 48 hours, depending on the composition and size of the composite. Drying can also be carried out by an method that limits shrinkage of the composite material, such as supercritical drying after fluid exchange with liquid carbon dioxide.” (paragraph 0014, lines 5-9). Droege teaches that drying may be carried out by conventional method including supercritical evaporation using carbon dioxide as well as by the cheaper simple evaporative drying (column 10, line 65 to column 11, line 6 and also column 3, lines 10-32). The simple evaporative drying step is then described in greater detail (column 11, lines 26-45) to comprise drying between 1 and 96 hours according to the specific temperature, composition, etc. This encompasses the applicant’s process of evaporative drying between 12 and 48 hours. Overall, no difference is seen between the drying process taught by the applicants and that of Droege and it is expected that the drying method of Droege, being identical to that taught by the applicant, will result in the reduction of surface tensile forces.

Furthermore, it is noted that the Declaration of 1/25/05 is not commensurate in scope with the claims in that the Declaration appears to require particular drying conditions whereas the claims are not drawn toward the use of a particular drying process, so long as surface tensile forces are reduced. It is expected that any method of drying will reduce the surface tensile forces to some degree.

The Declaration under 37 CFR 1.132 filed 25 January 2005 is insufficient to overcome the rejection of claims 1, 4, 8, and 18 based upon Pekala in view of Kaschmitter as set forth in the last Office action.

The applicants argue that the pore sizes of Pekala and Kaschmitter is required to be large enough so that electrolyte can flow in order to be useful as capacitor electrodes. It is implied therefore that the material is not monolithic. In response, it is first noted that applicants are attempting to limit their claimed process to one which produces a product having a certain average pore size, specifically an average pore size of less than 100 nm. However, nowhere in the claims (or in the specification) is a particular pore size required. The term “monolithic” is not defined by the applicant to require such a limitation on average pore size and thus the accepted definition of monolithic as meaning “a uniform whole” is applied to the term.

Additionally, specific pore sizes are not taught by Pekala and therefore it is unclear as to how the applicants have determined that the average pore size of Pekala is above a particular “cutoff value” at which the material ceases to be “monolithic”.

The Declaration of 1/25/05 additionally seems to require that in order to achieve this average pore size, supercritical drying be used. It is therefore unclear as to how the applicants, in the original disclosure, teach that the material may be obtained using simple evaporative drying. Moreover, the Declaration states that it is well known that supercritical drying will produce this monolithic average pore size. Therefore, it is unclear as to why the process of Pekala, which utilizes supercritical drying in a process identical to that claimed, would fail to obtain the desired average pore size.

Lastly, no difference is seen between the process of Pekala and that of the applicants, *as claimed*. Again, it is noted that the Declaration of 1/25/05 is not commensurate in scope with the claims in that the Declaration appears to require particular average pore size, whereas the claims are not drawn toward the production of a material having a particular pore size.

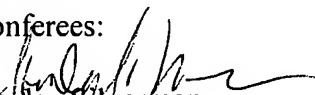
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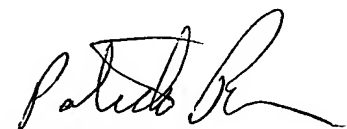
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Peter J Lish 

Conferees:

  
Stanley Silverman

  
Pat Ryan